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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Robert Alan Kemp,)	No. CV 08-384-TUC-FRZ
Plaintiff,)	ORDER
vs.)	
DMI-Aviation, Inc., et al.,)	
Defendant.)	

Before the Court for consideration is the Report and Recommendation of Magistrate Judge Bernardo P. Velasco, recommending that the Complaint and this action be dismissed with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

The Report and Recommendation, filed September 2, 2009, sets forth the procedural history of this action.

By Court Order filed May 21, 2009, this Court granted Plaintiff leave to file a second amended complaint in compliance with the relevant pleading requirements of Federal Rules of Civil Procedure 8 and 9 and referred this action back to Magistrate Judge Velasco for all pretrial proceedings and report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2 of the Rules of Practice of the United States District Court for the District of Arizona, Local Rules of Civil Procedure.

The Court set forth the pleading and procedural requirements of bringing a proper action in light of the fact that Plaintiff is proceeding *pro se*, citing *McHenry v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1996), and explained as follows:

1 The 38 page First Amended Complaint in this action captions eight
2 separate causes of action, however, the Court is unable to discern what the true
3 causes of action, if any, are. The First Amended Complaint, as well as the
4 subsequent filings are “so confused, ambiguous, vague or otherwise
unintelligible that its true substance, if any, is well disguised.” *Hearns v. San*
Bernardino Police Dept., 530 F.3d 1124, 1131 (9th Cir. 2008)(internal citations
and quotation omitted).

5 “Prolix, confusing complaints ... impose unfair burdens on litigants and
6 judges.” *McHenry*, 84 F.3d at 1179. A court may consider “[t]he burden
7 imposed by plaintiffs on defendants in related litigation” and the amount of
time and money spent in defending against poorly drafted proceedings in
8 present and related actions. *Id.* (citing *Nevijel v. North*
Coast Life Ins. Co., , 651 F.2d 671, 674-75 (9th Cir. 1981).

9 The previously filed federal complaints and the state court action appear
10 to arise from the same circumstances or facts, as best can be discerned, from
a review of the filings. Plaintiff has unsuccessfully attempted to prosecute his
grievances, which do not appear to present justiciable claims.

11 The Court found, referencing previous court orders in actions filed by Plaintiff
12 individually or under the corporate identity Aviation Technologies LTD:

13 ... that Plaintiff has failed to bring a cause of action, starting as early as 2002,
14 against the named Defendants, by filing different actions in different courts
and venues, *pro se* as well as through the representation of counsel, or, albeit
15 improperly, on behalf of a corporate entity.

16 The Court set forth the procedural history of the issues that appear to be in dispute.
17 The Court further gave Plaintiff deference to amend in light of his *pro se* status, as follows:

18 Dismissal with prejudice pursuant to Rule 41(b) is a harsh remedy, and
19 Ninth Circuit precedent clearly establishes “that the district court ‘should first
20 consider less drastic alternative.’” *Hearns*, 530 F.3d at 1132 (quoting
McHenry, 84 F.3d at 1178.) However, “[t]he propriety of dismissal for failure
21 to comply with Rule 8 does not depend on whether the complaint is wholly
without merit” and “applies to good claims as well as bad, and is a basis for
22 dismissal independent of Rule 12(b)(b).” *McHenry*, 84 F.3d at 1179 (citing
Nevijel, 651 F.2d at 673).

23 It appears that the previously filed actions have been dismissed without
24 prejudice, and thus, have not provided Plaintiff with notice of, or required
Plaintiff to comply with, the pleading requirements of Rule 8. Because
25 Plaintiff is proceeding *pro se*, “the [C]ourt must construe the pleadings
liberally and must afford the [P]laintiff the benefit of any doubt.” *Lopez v.*
Department of Health Services, 939 F.2d 881, 883-84 (9th Cir. 1991)(quoting
26 *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 623 (9th
Cir.1988). *See also Balistreri*, 901 F.2d at 699(“court recognizes that it has a
27 duty to ensure that *pro se* litigants do not lose their right to a hearing on the
28 merits of their claim due to technical procedural requirements.”) Moreover,

1 although proceeding *pro se*, Plaintiff is nevertheless bound by the federal and
2 local rules of procedure. *See Ghazali*, 46 F.3d at 54 (citing *King v. Atiyeh*, 814
F.2d 565, 567 (9th Cir. 1987)).

3 Magistrate Judge Velasco issued his Report and Recommendation on September 2,
4 2009, recommending, “upon consideration of the risk of prejudice to Defendants, Plaintiff’s
5 blatant disregard for court procedure, the numerous opportunities the Court has provided
6 Plaintiff to comply with proper procedure and the specific direction the Court has provided
7 to Plaintiff to assist in his compliance,” that the Complaint and this action should be
8 dismissed with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The
9 parties were advised in the Report and Recommendation that, pursuant to 28 U.S.C. §636(b),
10 any party may serve and file written objections within 10 days after being served with a copy
11 of the Report and Recommendation.

12 Plaintiff filed documents subsequent to the Report and Recommendation, however,
13 no opposition was filed. The last filing was a Notice of Change of Address.

14 The Court, after careful consideration of the five factors set forth in *Ferdik v.*
15 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992), and an independent review of the record
16 herein, specifically the warnings set forth in the Order of this Court filed May 21, 2009,
17 orders as follows:


18 **IT IS ORDERED** that Magistrate Judge Velasco’s Report and Recommendation
19 [Doc. #58] is hereby **ACCEPTED** and **ADOPTED** as the findings of fact and conclusions
20 of law by this Court;

21 **IT IS FURTHER ORDERED** that this action is hereby dismissed with prejudice;

22 **IT IS FURTHER ORDERED** that all other matters are denied as moot.

23 Judgment shall be entered accordingly.

24
25 DATED this 13th day of October, 2009.

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28 FRANK R. ZAPATA
United States District Judge